

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ROBERT KIAMA WAMARU,)	
Petitioner,)	
vs.)	No. 3:16-CV-3066-N
)	
STATE OF TEXAS,)	Referred to U.S. Magistrate Judge
Respondent.)	

ORDER

Pursuant to *Special Order 3-251*, this habeas case has been automatically referred for findings, conclusions, and recommendation. Before the Court is the petitioner's *Motion to Withdraw & Recall Habeas Case Upon Grounds of Plain Error Due to Improper Venue Filing*, received on November 16, 2016 (doc. 7). The petitioner seeks to voluntarily dismiss his habeas action without prejudice so that he may exhaust his remedies in state court.

Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides that a plaintiff may dismiss his action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.¹ This right to voluntarily dismiss an action before the filing of an answer or summary judgment motion is "absolute and unconditional" and may not be "extinguished or circumscribed by adversary or court." *International Driver Training Inc. v. J-BJRD Inc.*, 202 F. App'x 714, 715-16 (5th Cir. Oct. 16, 2006), quoting 8 James W. Moore et al., *Moore's Federal Practice*, § 41.33[2], at 41-48 (Matthew Bender 3d ed. 2006) and *Am. Cyanamid Co. v. McGhee*, 317 F. 2d 295, 297 (5th Cir. 1963). A notice of voluntary dismissal under this rule is "self-executing", and no further court action is required. *Id.*

¹Rule 41(a) applies in federal habeas corpus proceedings. *See Kramer v. Butler*, 845 F.2d 1291, 1294 (5th Cir. 1988).

Here, although it has been recommended that the case be dismissed without prejudice for failure to exhaust administrative remedies, the respondent has not yet filed an answer or a summary judgment motion. Voluntary dismissal without a court order is therefore appropriate under Rule 41(a)(1)(A)(i). The petitioner's motion is liberally construed as a notice of voluntary dismissal of his claims without prejudice as provided by that rule, and no further action is required. The Clerk of Court is directed to terminate this action pursuant to that notice.

SIGNED this 18th day of November, 2016.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE